

Introduced by Senator Bowen

February 22, 2005

An act to repeal and amend Sections 1798.29 and 1798.82 of the Civil Code, relating to identity theft.

LEGISLATIVE COUNSEL'S DIGEST

SB 852, as introduced, Bowen. Identity theft.

Existing law requires any agency, or a person or business conducting business in California, which owns or licenses computerized data that includes personal information, as defined, to disclose in specified ways, any breach of the security of the data, as defined, to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

This bill would require an agency, or a person or business conducting business in California, that possesses any data that includes the personal information of a California resident, to notify the resident of any breach of the security of the data, as specified. The bill would also repeal duplicative provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1798.29 of the Civil Code, as added by
- 2 Section 2 of Chapter 915 of the Statutes of 2002, is repealed.
- 3 ~~1798.29. (a) Any agency that owns or licenses computerized~~
- 4 ~~data that includes personal information shall disclose any breach~~
- 5 ~~of the security of the system following discovery or notification~~
- 6 ~~of the breach in the security of the data to any resident of~~

1 ~~California whose unencrypted personal information was, or is~~
2 ~~reasonably believed to have been, acquired by an unauthorized~~
3 ~~person. The disclosure shall be made in the most expedient time~~
4 ~~possible and without unreasonable delay, consistent with the~~
5 ~~legitimate needs of law enforcement, as provided in subdivision~~
6 ~~(e), or any measures necessary to determine the scope of the~~
7 ~~breach and restore the reasonable integrity of the data system.~~

8 ~~(b) Any agency that maintains computerized data that includes~~
9 ~~personal information that the agency does not own shall notify~~
10 ~~the owner or licensee of the information of any breach of the~~
11 ~~security of the data immediately following discovery, if the~~
12 ~~personal information was, or is reasonably believed to have been,~~
13 ~~acquired by an unauthorized person.~~

14 ~~(c) The notification required by this section may be delayed if~~
15 ~~a law enforcement agency determines that the notification will~~
16 ~~impede a criminal investigation. The notification required by this~~
17 ~~section shall be made after the law enforcement agency~~
18 ~~determines that it will not compromise the investigation.~~

19 ~~(d) For purposes of this section, “breach of the security of the~~
20 ~~system” means unauthorized acquisition of computerized data that~~
21 ~~compromises the security, confidentiality, or integrity of personal~~
22 ~~information maintained by the agency. Good faith acquisition of~~
23 ~~personal information by an employee or agent of the agency for~~
24 ~~the purposes of the agency is not a breach of the security of the~~
25 ~~system, provided that the personal information is not used or~~
26 ~~subject to further unauthorized disclosure.~~

27 ~~(e) For purposes of this section, “personal information” means~~
28 ~~an individual’s first name or first initial and last name in~~
29 ~~combination with any one or more of the following data~~
30 ~~elements, when either the name or the data elements are not~~
31 ~~encrypted:~~

32 ~~(1) Social security number.~~

33 ~~(2) Driver’s license number or California Identification Card~~
34 ~~number.~~

35 ~~(3) Account number, credit or debit card number, in~~
36 ~~combination with any required security code, access code, or~~
37 ~~password that would permit access to an individual’s financial~~
38 ~~account.~~

39 ~~(f) For purposes of this section, “personal information” does~~
40 ~~not include publicly available information that is lawfully made~~

1 available to the general public from federal, state, or local
2 government records.

3 (g) For purposes of this section, “notice” may be provided by
4 one of the following methods:

5 (1) Written notice.

6 (2) Electronic notice, if the notice provided is consistent with
7 the provisions regarding electronic records and signatures set
8 forth in Section 7001 of Title 15 of the United States Code.

9 (3) Substitute notice, if the agency demonstrates that the cost
10 of providing notice would exceed two hundred fifty thousand
11 dollars (\$250,000), or that the affected class of subject persons to
12 be notified exceeds 500,000, or the agency does not have
13 sufficient contact information. Substitute notice shall consist of
14 all of the following:

15 (A) E-mail notice when the agency has an e-mail address for
16 the subject persons.

17 (B) Conspicuous posting of the notice on the agency’s Web
18 site page, if the agency maintains one.

19 (C) Notification to major statewide media.

20 (h) Notwithstanding subdivision (g), an agency that maintains
21 its own notification procedures as part of an information security
22 policy for the treatment of personal information and is otherwise
23 consistent with the timing requirements of this part shall be
24 deemed to be in compliance with the notification requirements of
25 this section if it notifies subject persons in accordance with its
26 policies in the event of a breach of security of the system.

27 SEC. 2. Section 1798.29 of the Civil Code, as added by
28 Section 2 of Chapter 1054 of the Statutes of 2002, is amended to
29 read:

30 1798.29. (a) *Any-Except as provided in subdivision (c), any*
31 *agency that owns or licenses computerized data that includes*
32 *personal information concerning a California resident shall*
33 *disclose any notify the resident that there has been a breach of*
34 *the security of the system that data following discovery or*
35 *notification of the breach in the security of the data to any*
36 *resident of California whose unencrypted personal information*
37 *was, or is reasonably believed to have been, acquired by an*
38 *unauthorized person. The disclosure notification shall be made in*
39 *the most expedient time possible and without unreasonable delay,*
40 *consistent with the legitimate needs of law enforcement, as*

1 provided in subdivision (c), or *with* any measures necessary to
2 determine the scope of the breach and restore the reasonable
3 ~~integrity security and confidentiality~~ of the data system.

4 (b) Any agency that maintains ~~computerized~~ data that includes
5 personal information *concerning a California resident and* that
6 the agency does not own shall notify the owner or licensee of the
7 information of any breach of the security of the data immediately
8 following discovery, if the personal information was, or is
9 reasonably believed to have been, acquired by an unauthorized
10 person.

11 (c) (1) The notification required by this section may be
12 delayed if a law enforcement agency determines that the
13 notification will impede a criminal investigation. The notification
14 required by this section shall be made after the law enforcement
15 agency determines that it will not compromise the investigation.

16 (2) *The notification under this section is not required if, as a*
17 *result of the investigation described in paragraph (1), the law*
18 *enforcement agency concludes that personal information was not*
19 *acquired by an unauthorized person.*

20 (d) For purposes of this section, “breach of the security of the
21 ~~system data~~” means unauthorized acquisition of ~~computerized~~
22 data that compromises the security; *and confidentiality, or*
23 ~~integrity~~ of personal information maintained by the agency. Good
24 faith acquisition of personal information by an employee or agent
25 of the agency ~~for the purposes~~ *a purpose* of the agency is not a
26 breach of the security of the ~~system data~~, provided that the
27 personal information is not used *for a purpose unrelated to the*
28 *agency* or subject to further unauthorized disclosure.

29 (e) For purposes of this section, “personal information” means
30 an individual’s first name or first initial and last name in
31 combination with any one or more of the following data
32 elements, when ~~either the name or~~ the data elements are not
33 encrypted *or redacted*:

34 (1) Social security number.

35 (2) Driver’s license number or California Identification Card
36 number.

37 (3) Account number; *or* credit or debit card number, in
38 combination with any required security code, access code, or
39 password that would permit access to an individual’s financial
40 account.

(f) For purposes of this section, “personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, “notice” may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency’s Web site page, if the agency maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this ~~part~~ *section* shall be deemed to be in compliance with the notification requirements of this section if ~~it~~ *the agency* notifies ~~the~~ *the* subject persons in accordance with its policies in the event of a breach of security of the ~~system~~ *data*.

SEC. 3. Section 1798.82 of the Civil Code, as added by Section 4 of Chapter 915 of the Statutes of 2002, is repealed.

~~1798.82. (a) Any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs~~

1 of law enforcement, as provided in subdivision (c), or any
2 measures necessary to determine the scope of the breach and
3 restore the reasonable integrity of the data system.

4 (b) Any person or business that maintains computerized data
5 that includes personal information that the person or business
6 does not own shall notify the owner or licensee of the
7 information of any breach of the security of the data immediately
8 following discovery, if the personal information was, or is
9 reasonably believed to have been, acquired by an unauthorized
10 person.

11 (c) The notification required by this section may be delayed if
12 a law enforcement agency determines that the notification will
13 impede a criminal investigation. The notification required by this
14 section shall be made after the law enforcement agency
15 determines that it will not compromise the investigation.

16 (d) For purposes of this section, “breach of the security of the
17 system” means unauthorized acquisition of computerized data
18 that compromises the security, confidentiality, or integrity of
19 personal information maintained by the person or business. Good
20 faith acquisition of personal information by an employee or agent
21 of the person or business for the purposes of the person or
22 business is not a breach of the security of the system, provided
23 that the personal information is not used or subject to further
24 unauthorized disclosure.

25 (e) For purposes of this section, “personal information” means
26 an individual’s first name or first initial and last name in
27 combination with any one or more of the following data
28 elements, when either the name or the data elements are not
29 encrypted:

30 (1) Social security number.

31 (2) Driver’s license number or California Identification Card
32 number.

33 (3) Account number, credit or debit card number, in
34 combination with any required security code, access code, or
35 password that would permit access to an individual’s financial
36 account.

37 (f) For purposes of this section, “personal information” does
38 not include publicly available information that is lawfully made
39 available to the general public from federal, state, or local
40 government records.

1 ~~(g) For purposes of this section, “notice” may be provided by~~
2 ~~one of the following methods:~~

3 ~~(1) Written notice.~~

4 ~~(2) Electronic notice, if the notice provided is consistent with~~
5 ~~the provisions regarding electronic records and signatures set~~
6 ~~forth in Section 7001 of Title 15 of the United States Code.~~

7 ~~(3) Substitute notice, if the person or business demonstrates~~
8 ~~that the cost of providing notice would exceed two hundred fifty~~
9 ~~thousand dollars (\$250,000), or that the affected class of subject~~
10 ~~persons to be notified exceeds 500,000, or the person or business~~
11 ~~does not have sufficient contact information. Substitute notice~~
12 ~~shall consist of all of the following:~~

13 ~~(A) E-mail notice when the person or business has an e-mail~~
14 ~~address for the subject persons.~~

15 ~~(B) Conspicuous posting of the notice on the Web site page of~~
16 ~~the person or business, if the person or business maintains one.~~

17 ~~(C) Notification to major statewide media.~~

18 ~~(h) Notwithstanding subdivision (g), a person or business that~~
19 ~~maintains its own notification procedures as part of an~~
20 ~~information security policy for the treatment of personal~~
21 ~~information and is otherwise consistent with the timing~~
22 ~~requirements of this part, shall be deemed to be in compliance~~
23 ~~with the notification requirements of this section if the person or~~
24 ~~business notifies subject persons in accordance with its policies~~
25 ~~in the event of a breach of security of the system.~~

26 SEC. 4. Section 1798.82 of the Civil Code, as added by
27 Section 4 of Chapter 1054 of the Statutes of 2002, is amended to
28 read:

29 1798.82. (a) *Any-Except as provided in subdivision (c), any*
30 *person or business that conducts business in California, and that*
31 *owns or licenses computerized data that includes personal*
32 *information concerning a California resident, shall disclose any*
33 *notify that resident that there has been a breach of the security of*
34 ~~the system that data~~ *following discovery or notification of the*
35 ~~breach in the security of the data to any resident of California~~
36 ~~whose unencrypted personal information was, or is reasonably~~
37 ~~believed to have been, acquired by an unauthorized person. The~~
38 ~~disclosure notification~~ *shall be made in the most expedient time*
39 *possible and without unreasonable delay, consistent with the*
40 *legitimate needs of law enforcement, as provided in subdivision*

1 (c), or any measures necessary to determine the scope of the
2 breach and restore the reasonable ~~integrity~~ security and
3 confidentiality of the data system.

4 (b) Any person or business that maintains computerized data
5 that includes personal information *concerning a California*
6 *resident and* that the person or business does not own shall notify
7 the owner or licensee of the information of any breach of the
8 security of the data immediately following discovery, if the
9 personal information was, or is reasonably believed to have been,
10 acquired by an unauthorized person.

11 (c) (1) The notification required by this section may be
12 delayed if a law enforcement agency determines that the
13 notification will impede a criminal investigation. The notification
14 required by this section shall be made after the law enforcement
15 agency determines that it will not compromise the investigation.

16 (2) *The notification under this section is not required if, as a*
17 *result of the investigation described in paragraph (1), the law*
18 *enforcement agency concludes that personal information was not*
19 *acquired by an unauthorized person.*

20 (d) For purposes of this section, “breach of the security of the
21 ~~system data~~” means unauthorized acquisition of computerized
22 data that compromises the security; *and* confidentiality; ~~or~~
23 ~~integrity~~ of personal information maintained by the person or
24 business. Good faith acquisition of personal information by an
25 employee or agent of the person or business for ~~the purposes a~~
26 *purpose* of the person or business is not a breach of the security
27 of the ~~system data~~, provided that the personal information is not
28 *used for a purpose unrelated to the person or business* or subject
29 to further unauthorized disclosure.

30 (e) For purposes of this section, “personal information” means
31 an individual’s first name or first initial and last name in
32 combination with any one or more of the following data
33 elements, ~~when either the name or the data elements are not~~
34 *encrypted or redacted:*

35 (1) Social security number.

36 (2) Driver’s license number or California Identification Card
37 number.

38 (3) Account number; *or* credit or debit card number, in
39 combination with any required security code, access code, or

1 password that would permit access to an individual's financial
2 account.

3 (f) For purposes of this section, "personal information" does
4 not include publicly available information that is lawfully made
5 available to the general public from federal, state, or local
6 government records.

7 (g) For purposes of this section, "notice" may be provided by
8 one of the following methods:

9 (1) Written notice.

10 (2) Electronic notice, if the notice provided is consistent with
11 the provisions regarding electronic records and signatures set
12 forth in Section 7001 of Title 15 of the United States Code.

13 (3) Substitute notice, if the person or business demonstrates
14 that the cost of providing notice would exceed two hundred fifty
15 thousand dollars (\$250,000), or that the affected class of subject
16 persons to be notified exceeds 500,000, or the person or business
17 does not have sufficient contact information. Substitute notice
18 shall consist of all of the following:

19 (A) E-mail notice when the person or business has an e-mail
20 address for the subject persons.

21 (B) Conspicuous posting of the notice on the Web site page of
22 the person or business, if the person or business maintains one.

23 (C) Notification to major statewide media.

24 (h) Notwithstanding subdivision (g), a person or business that
25 maintains its own notification procedures as part of an
26 information security policy for the treatment of personal
27 information and is otherwise consistent with the timing
28 requirements of this ~~part~~, *section* shall be deemed to be in
29 compliance with the notification requirements of this section if
30 the person or business notifies *the* subject persons in accordance
31 with its policies in the event of a breach of security of the ~~system~~
32 *data*.